



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No: 110907562-5455-02]

RIN 0648-BB40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Omnibus Amendment to Simplify Vessel Baselines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve an Omnibus Amendment to the Fishery Management Plans of the Northeastern United States to simplify vessel baselines. This Omnibus Amendment to Simplify Vessel Baselines, which was submitted by the Mid-Atlantic and New England Fishery Management Councils, would eliminate the one-time limit on vessel upgrades and remove gross and net tonnages from the vessel baseline specifications that are considered when determining a vessel's baseline for replacement purposes. Implementing these measures would reduce the administrative burden to permit holders and NMFS and would have little effect on fleet capacity.

This proposed rule would also remove the requirement for vessels to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when fishing

did not occur. NMFS no longer needs these reports due to improved trip-level matching. Therefore, NMFS is proposing to remove this requirement to simplify the regulations and reduce reporting burdens for the industry.

DATES: Written comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES:

You may submit comments on this document, identified by NOAA-NMFS-2011-0213, by either of the following methods:

ELECTRONIC SUBMISSION: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2011-0213,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Omnibus Amendment to Simplify Vessel Baselines, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are

available from the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 The EA/RIR is also accessible via the Internet at:

www.greateratlantic.fisheries.noaa.gov.

To review **Federal Register** documents referenced in this rule, you can visit:

http://www.greateratlantic.fisheries.noaa.gov/mediacenter/ongoing/omnibus_amendment_to_simplify_vessel_baselines.html.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) approved this Baseline Amendment, which would simplify vessel baseline requirements, at their November 18, 2014, and October 8, 2014, meetings, respectively. Following these approvals and on behalf of the Councils, NMFS prepared additional analyses for the amendment based on the preferred alternatives and, once those were completed, declared a transmittal date of May 12, 2015. Both Councils have reviewed the proposed Baseline Amendment regulations as drafted by NMFS, and deemed them necessary and appropriate, as specified in section 303(c) of the MSA. If approved by NMFS, this

amendment would simplify the specifications considered when determining a vessel's baseline for replacement purposes.

Background

The MAFMC developed the first limited entry program in 1977 for the surfclam/quahog fishery, which included restrictions on replacement vessels. This program required that a replacement vessel be of “substantially similar capacity” in an effort to maintain but not increase the harvest capacity of the fleet at that time. Over the following two decades, the MAFMC and NEFMC implemented additional limited entry programs. By 1998, there were four different sets of vessel upgrade and replacement restrictions among the various FMPs. The upgrade restrictions became confusing for fishing industry members with more than one limited access permit, because different vessel upgrade regulations could apply to each permit. In addition, some vessels added limited access permits that originally qualified on another vessel that was a different size and/or horsepower. This results in a vessel having multiple baselines. Thus, in 1999, the MAFMC and NEFMC, in consultation with NMFS, developed the Amendment to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits (64 FR 8263, February 19, 1999) (Consistency Amendment) to streamline and make consistent baseline provisions and upgrade restrictions across FMPs.

The Consistency Amendment standardized definitions and restrictions for vessel baselines, upgrades, and replacements across all limited access fisheries. It simplified regulations for vessel replacements, permit transfers, and vessel upgrades, making them consistent and less restrictive in order to facilitate business transactions. Although the

Consistency Amendment did standardize the vessel baseline requirements for the fisheries of the northeast, some burdensome requirements remain. Under current restrictions, a vessel baseline is defined by vessel length overall, gross tonnage, net tonnage, and horsepower. We determine the baseline for a limited access permit based on the size (length, gross tonnage, and net tonnage) and horsepower of the first vessel issued a limited access permit for that fishery or, for fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel at the time the final rule became effective.

Current baseline regulations require that a replacement vessel or an upgrade made to an existing vessel with a limited access permit be within 10 percent of the size and 20 percent of the horsepower of the permit's baseline vessel. To respect the NEFMC and the MAFMC's intended baseline restrictions of individual fisheries, for vessels with multiple baselines, we use the most restrictive of the baselines to judge the approval of a replacement vessel or upgrade, unless the permit holder chooses to relinquish the more restrictive permit. In addition, current baseline regulations limit permit holders to a one-time upgrade of the vessel size and horsepower specifications. For example, we limit a vessel owner that has a 60-ft (18.3-m) baseline length to upgrading to a vessel of up to 66 ft (20.1 m). However, if he moves his permit to a 62-ft (18.9-m) vessel for any reason, it would constitute his one-time size upgrade and he would lose the ability to upgrade to a vessel of 66 ft (20.1 m). He would only be able to move his permit to a vessel of 62 ft (18.9 m) or less. Because he used his one-time size upgrade, he would not be able upgrade the vessel's tonnages. He would still be able use his horsepower upgrade to upgrade his horsepower by 20 percent, but only once.

The Baseline Amendment would:

1. Eliminate gross and net tonnage from the baseline specifications considered when determining a vessel's baseline for replacement purposes. Both the Councils and NMFS consider tonnages the most variable of vessel baseline specifications and, therefore, they have little effect on limiting vessel capacity when compared to length and horsepower restrictions. There is more than one acceptable method of determining tonnages, and the tonnages of a vessel can vary significantly depending on whether an exact measurement or simplified calculation is used. In addition, vessel owners can circumvent net tonnage limits by modifying internal bulkheads. Eliminating tonnages would simplify the vessel baseline verification and replacement process. In addition, it could reduce the cost burden on the industry if they only need horsepower verification because this would eliminate the need for a marine survey prior to any permit transactions.

2. Remove the one-time limit on vessel upgrades. Eliminating the one-time upgrade limit would provide more flexibility for vessel owners in the selection of replacement vessels and upgrades to existing vessels. Some vessel owners have been constrained by the one-time limit because they or a previous owner did not maximize the one-time upgrade with a previous vessel replacement, due to cost or availability or for other reasons, and have since been unable to further upgrade the vessel. Eliminating the one-time limit would also simplify the baseline verification and vessel replacement process for vessel owners and NMFS by eliminating the need to research and document whether a vessel owner used the one-time upgrade during the vessel's entire limited access history.

This rule proposes to remove the requirement for vessels to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when fishing did not occur. This was not part of the Baseline Amendment, but is the result of an internal review of the trip-level reporting requirements conducted by the joint Greater Atlantic Regional Fisheries Office-Northeast Fisheries Science Center Fishery Dependent Data Committee (FDDC) during the past year. The division of the Office of Management and Budget (OMB) responsible for the Paperwork Reduction Act (PRA), in the interest of reducing compliance costs for small businesses, noted a potential cost savings for fishermen if we remove the DNF report and asked that we investigate the possibility of removing it. As a result of that review, the FDDC has recommended that the negative fishing reports are no longer necessary because the ability to determine if a vessel has engaged in fishing activity and submitted required trip reports has increased in recent years due to improved trip-level data matching and the expansion of other monitoring systems (e.g., Vessel Monitoring Systems). Therefore, in order to simplify the regulations and reduce reporting burdens for the industry, we are proposing to eliminate the negative fishing reports requirement in this action under the Secretary’s authority at section 305(d) of the Magnuson-Stevens Act. Vessel owners would still be required to report all fishing trip activity on a monthly or weekly basis, depending on the requirements associated with their vessel permits.

Classification

Pursuant to section 303(c) of the Magnuson-Stevens Act, the MAFMC and the NEFMC have deemed the proposed regulations, with the exception of those noted above

as proposed under the Secretary's authority at § 305(d), to be necessary and appropriate for the purpose of implementing the Baseline Amendment.

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Baseline Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

A notice of availability of the Draft EA/RIR, which analyzed the impacts of all the measures under consideration in the Baseline Amendment, was published at 80 FR 28217, May 18, 2014.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would apply to all federally permitted fishing vessels operating in the Northeast Region subject to one or more of the affected FMPs (Black Sea Bass, Summer Flounder, Scup, Atlantic Herring, Illex Squid, Longfin Squid, Atlantic Mackerel, Mahogany Quahog, Monkfish, Northeast Multispecies, Atlantic Sea Scallop, and Red Crab). The proposed rule, if finalized, would eliminate the one-time limit on vessel upgrades and remove gross and net tonnages from vessel baseline specifications considered when determining a vessel's baseline for replacement purposes. It would also remove the requirement for vessels to send in negative fishing reports (i.e., "did not fish")

reports) during months or weeks when fishing did not occur. Implementing these measures would reduce the administrative burden to permit holders, leading to increased profits for the regulated community.

Removing tonnages from vessel baselines may also simplify or eliminate the need for a permit holder to hire a naval architect to determine and document tonnage if it was not previously established. NMFS estimates the resulting average cost savings of as much as \$375 per survey. Removing tonnages and upgrades may negate the need for a permit holder to hire a third party to research the permit's history and prepare the replacement application. Estimates of the costs for these third party services were not available, but NMFS estimates that permit holders spend an average of 3 hours, or \$270 in labor costs, preparing vessel replacement applications.

Removing the one-time upgrade limit would also simplify administration of vessel baselines by eliminating the need for permit holders and NMFS to determine whether a permit already used its one-time upgrade or an upgrade to tonnage at some point in its history. This research can be a substantial time and cost burden for a permit holder, especially if the permit has changed hands several times.

In addition, removing the requirement to send in negative fishing reports would relieve a substantial time and cost burden for permit holders. The relief of burden estimates for removing this requirement applies to all federally permitted vessels. In 2014, NMFS received approximately 78,000 did not fish reports. We estimated public reporting burden for submitting these reports to average 2 min per response with an associated cost of \$0.45. Therefore, 78,000 did not fish reports would reduce total compliance costs by \$35,100, and reduce reporting burden by 2,600 hours annually.

Because there are cost savings resulting from this proposed rule, the impact on small entities would be a positive one. Therefore, this rule would not impose significant costs or burdens on any small entities. No small entities would be placed at a competitive disadvantage to large entities, and the regulations would not reduce the profit for any small entities. Because this rule will not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

The proposed action contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The request to remove the collection burden for vessel gross and net tonnages, vessel upgrades, and did not fish report requirements will be submitted to OMB for approval under the NMFS Northeast Region Scallop Report Family of Forms (OMB Control No. 0648-0202 and 0648-0212).

Vessels would no longer be required to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when fishing did not occur. Vessel owners would still be required to report all fishing trip activity on a monthly or weekly basis, depending on the requirements associated with their vessel permits. The collection of negative fishing reports is no longer needed to determine if a vessel has engaged in fishing activity and submitted required trip reports due to improved trip-level data matching and the expansion of other monitoring systems (e.g., Vessel Monitoring Systems).

The relief of burden estimates for removing this requirement applies to all federally permitted vessels. In 2014, NMFS received approximately 78,000 did not fish

reports. We estimated public reporting burden for submitting these reports to average 2 min per response with an associated cost of \$0.45.

Therefore, 78,000 did not fish reports would reduce total compliance costs by \$35,100, and reduce reporting burden by 2,600 hr annually.

Public comment is sought regarding: whether this proposed reduction in collection of information is appropriate for the proper performance of the functions of the agency, including whether the forgone information would still have practical utility; the accuracy of the reduction in burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (See **ADDRESSES** above), and e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

This action contains no other compliance costs. It does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: May 27, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.2 [Amended]

2. In § 648.2, remove the definition of “Substantially similar harvesting capacity.”

3. In § 648.4, revise paragraphs (a)(1)(i)(E)(*I*), (a)(1)(i)(E)(2), (a)(1)(i)(F)(*I*), (a)(1)(i)(F)(2), (a)(1)(i)(H), (a)(3)(i)(H), (a)(13)(i)(E)(*I*), (a)(13)(i)(F), and (a)(13)(i)(H) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(E) * * *

(1) The replacement vessel's horsepower may not exceed the horsepower of the vessel's baseline specifications by more than 20 percent, as applicable.

(2) The replacement vessel's length overall may not exceed the length overall of the vessel's baseline specifications by more than 10 percent, as applicable.

(F) * * *

(1) The upgraded vessel's horsepower may not exceed the horsepower of the vessel's baseline specifications by more than 20 percent , as applicable.

(2) The upgraded vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent, as applicable.

* * * * *

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

* * * * *

(3) * * *

(i) * * *

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline

specification date in which case the baseline specifications will be established no later than February 19, 2000.

* * * * *

(13) * * *

(i) * * *

(E) * * *

(I) To be eligible for a limited access permit under this section, the replacement vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

* * * * *

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the new length overall of the upgraded vessel does exceed the vessel's baseline length overall by more than 10 percent, as applicable.

* * * * *

(H) *Vessel baseline length.* The vessel baseline length in this section is the overall length of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

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4. In § 648.7, revise paragraphs (b)(1)(i) and (f)(2)(i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, “small” (i.e., less than 23 inches (58.42 cm), total length) or “large” (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, Illex squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, Illex squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

* * * * *

5. In § 648.14, revise paragraphs (b)(4) and (k)(2)(i) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(b) * * *

(4) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access or moratorium permit under §648.4(a) and that has had the horsepower or length overall of such vessel or its replacement upgraded or increased in excess of the limitations specified in §648.4(a)(1)(i)(E) and (F).

* * * * *

(k) * * *

(2) * * *

(i) Fish for, possess, or land NE multispecies with or from a vessel that has had the length overall of such vessel, or its replacement, increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

* * * * *

6. In § 648.82, revise paragraphs (l)(1)(ii) and (l)(1)(iii) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(l) * * *

(1) * * *

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or the vessel owner could choose to adopt the larger baseline of the two vessels provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits

exist, i.e., those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

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